MEETING OF THE WISCONSIN BRANCH OF THE INSTITUTE.[1]

I. REPORT OF COMMITTEE ON CRIMINAL EXPERTS.

C. B. BIRD, CHAIRMAN.[2]

As to Exceptions to Judge's Charge.—This committee was asked to consider the following matter:

> "The formulation of necessary amendments to the laws of the state to prevent the taking of exceptions to the judge's charge, except where the true rule has been given to the court by counsel in time to correct the charge before the jury returns a verdict."

At the 1912 meeting your committee suggested two statutes, either of which would accomplish the desired result, but recommended against the passage of either.

The reasons for such recommendation are summarized in the report (Proceedings for 1912, pages 274 to 277), the sum of which was that on the whole less good than evil would be likely to result. The recommendation of the committee that "the passage of such a statute be excluded from our endeavors" was adopted (page 27). Since then the 1913 legislature (joint resolutions No. 30) has requested the Supreme Court to report a proposed simplified code of procedure; and also enacted (Chapter 214, Laws of 1913, 2405) that the Appellate Court may reverse in the interest of justice whether or not "proper motions, objections or exceptions appear in the record." The existing rule in Wisconsin now is that no error will accomplish reversal unless, except for the error, a different result would probably have been reached. In other words, unless the error complained of has produced an unjust judgment it is harmless.

It therefore seems that the question here considered has become obsolete and that we should adhere to our former vote that it be dropped from further consideration. We so recommend.

State Accredited Alienists.—A bill to authorize the appointment of such alienists and regulate expert testimony where the defense of insanity is made in criminal cases has been presented to the last two legislatures, but not yet passed.

During the 1911 legislature Senate Bill No. 320 was introduced

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[1]The annual meeting of the Wisconsin Branch of the Institute was held at Green Bay on June 23-24. We publish here the reports that were submitted at that meeting.—[Eds.]

[2]The membership of this committee is as follows: C. B. Bird, A. C. Umbreit, M. B. Rosenbury, F. E. Bump.

February 16, 1911 (Senate Journal, page 782), providing, in substance, for the appointment by the governor of from ten to twenty such alienists from whom, in case such issue is raised, the trial judge should choose three to examine the accused and testify to their conclusions, and giving both parties authority, in the discretion of the court, to call two other expert witnesses on each side. The text of the bill is printed in the proceedings of our 1911 meeting (pages 4-5, appendix).

The bill was amended by increasing the number of the board from "ten to twenty," as in the original bill, to "from twenty-five to fifty" and by changing the number of others who might be called on each side from "two" to "three," and by increasing the compensation from "not more than fifteen" to "not more than twenty-five dollars" per day and expenses. The amendment was adopted, but the bill as amended was then defeated (Senate Journal, page 841).

At our 1911 annual meeting, held in December, your committee recommended that another attempt be made to secure the passage of such bill. Inasmuch as the opposition to the bill was based somewhat upon a decision of the Supreme Court of Michigan (*People v. Dickerson,* 129 N. W. 199), holding a similar statute unconstitutional because not "due process of law," your committee submitted certain authorities apparently not considered by the Michigan court and expressed their opinion that such bill would probably be held valid in Wisconsin (See 911 Proceedings, page 2 and 3 appendix). This recommendation was adopted (Proceedings, page 51).

At the 1913 session of the legislature Senate Bill No. 189 (substantially similar to the 1911 Senate Bill No. 320) was introduced. On April 15 it was amended by increasing the number of discretionary witnesses on each side from two to three and the compensation to "not more than twenty-five dollars per day and expenses." On May 13 the bill, as so amended, was passed by the Senate by vote of twenty-two *Ayes* to two *Nayes.* On May 20 the Assembly Judiciary Committee reported the bill without recommendation. Assemblymen Anderson, Heading, McComb and Rosa were in favor of concurrence, and Assemblymen Hurlbut, Dolan, Frederick and Hood opposed. On May 26 the Assembly refused to concur (there being no roll call, we do not know the vote) and the bill was again defeated.

In our judgment, the measure is meritorious, and an attempt should again be made before the next legislature to secure its passage.

Appointment of District Attorneys by the Court.—At our 1911 meeting your committee reported that, in their judgment, the appointment of district attorney by the court would aid to accomplish "a

much more efficient administration of our criminal law," but, in view of the probable opposition, the committee reported "whether it is expedient to enter a contest for its accomplishment we leave it to this body to decide." (Appendix, pages 3 and 4.) After considerable discussion (Minutes of Proceedings, pages 30 to 46), the matter was re-referred to the committee without action (page 46).

At our 1912 meeting Mr. M. B. Rosenberry, on behalf of our committee, made a special report as to district attorney (Proceedings, pages 278 to 283), to which was annexed a table showing the method of election, term of office and salary of district attorney in the several states (pages 284 to 292). The report contained no specific recommendation, but stated that the necessary constitutional amendment to permit the appointment of district attorneys by either the governor or presiding judge probably could not be passed and that the only practical remedy is education of the electors with references to the responsibility of the office and necessity for choosing experienced and qualified persons to fill it (page 282). The report of the committee was adopted, which action apparently meant that the conference indorsed the views there expressed (1912 Minutes, page 30).

The question here involved is a large and troublesome one.

The emphasis heretofore has been laid upon the inefficiency of the young, inexperienced district attorney. Now, however, people are beginning to lay emphasis upon the danger of partisan prosecutions for the sake of making a record. It is even proposed of late that the poor defendant is at a disadvantage and should have protection through the office proposed to be created of "public defender." Thus the pendulum swings.

The truth is that the ideal district attorney should be such a paragon of energy, poise, knowledge and experience that he can be nowhere found. The young man is usually energetic, zealous and inexperienced, while the older man would be unwilling to devote the energy and zeal which are at many times required and the tedious detail work always required, but would furnish the poise and mature judgment which is often requisite.

The situation is solved in part by the present custom of electing energetic young men to the office to whom the county board or the court furnishes assistance by appointment of special counsel in important cases. However, youth is not always willing to ask for assistance nor the public to countenance extra expense to one supposed to do all of the work at a stated salary. A practical solution might be found in creating the position of "county counselor." The expense probably would not greatly, perhaps not at all, exceed the special expense now

being incurred. The district attorney would then do the active work of the office, having an older head with whom to consult and who would assist in the prosecution of important cases. However, there are serious objections to both the practicality and to the idea itself.

Probably the only thing to do at present is to create a better public sentiment in these three respects: First, the importance of the office, and duty the electors owe to filling it; second, that assistance in important cases should be a matter of course, and in nowise a reflection upon the district attorney himself, and, third, such assistance should be provided not merely for trial, but often for consultation and advice.

II. REPORT OF COMMITTEE ON UNIFORM PRACTICE OF STRIKING JURORS IN CIVIL AND CRIMINAL ACTIONS.

B. R. GOGGINS, CHAIRMAN.[1]

At the annual 1911 meeting, this committee reported upon the question

> "What changes, if any, should be made in the existing law governing peremptory challenges and the impaneling of the jury in criminal cases?"

as follows:

> "This inquiry has in it two questions: What changes, if any, should be made in existing law (a) governing peremptory challenges? and (b) the impaneling of the jury?
>
> (a) The state and defense should have the same number of challenges in all criminal cases irrespective of the number of defendants. This is the rule in civil, including tort, actions and works injustice to no one.
>
> (b) Under our state constitution one charged with crime is entitled to trial by 'an impartial jury.' (Sec. 7, Art. I.) It is therefore clear that any legislation impairing this constitutional guarantee would be void. The court, in passing on the qualifications of jurors, would have the same powers and the same duties without as with any valid legislation. Our Supreme Court has taken advanced ground on this subject. (*Burns v. State,* 145 Wis. 373.) It does not sanction the abuses once quite common in this country and still to be found in some jurisdictions. Trial courts can as readily follow the practice authorized by our Supreme Court as that laid down by any constitutional statute. Duties of the trial court in this respect relate to matters occurring in court over which the court has direct control. It is difficult therefore to perceive wherein legislation in this behalf would be of any benefit and we recommend none.
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> As to the striking of a jury we are of the opinion that the

[1]The membership of this committee is as follows: B. R. Goggins, F. C. Winkler, H. O. Fairchild, A. J. Myrland, Geo. L. Williams.

method now followed in civil cases (Sec. 2851, L. 1909, p. 932) should be adopted in all criminal trials so far as practicable. We see no valid legal objection thereto. In civil cases the results are so satisfactory that no one would voluntarily go back to the old practice and the wonder is that the change did not come earlier. To conform to the number of strikes allowed, twenty jurors should be drawn, of course, instead of eighteen, in all trials for offenses less than capital. This practice works so satisfactorily to both sides that juries are now often drawn by agreement of the parties in this manner in such criminal cases.

In capital cases twenty jurors should be likewise drawn. Each side should have eight peremptory challenges, according to the present practice, and the other four strikes should be exercised after there are twenty qualified jurors in the box and each side has exhausted, to the extent it may elect, its said eight peremptory challenges. The reason for this difference in capital cases is that it sometimes happens that the parties do not exercise all the peremptory challenges they are entitled to and it would be unwise to adopt a practice that would almost surely require at the start the drawing of more jurors than the regular panel would furnish.

In all criminal cases, after the original panel has been exhausted, additional jurors should be obtained from the list returned by the jury commissioners, except when such list has been exhausted, when the court may obtain the number required by special venire.

In line with these recommendations the members of the committee signing this report herewith submit a part thereof proposed amendments of Secs. 4689 and 4690, Stats. 1898, marked Exhibit 'B' and made a part hereof."

This report was adopted with the single amendment—to wit, the insertion of the words "unless the court shall otherwise direct" between the words "exhausted" and "when" in the second last line of said Exhibit "B" thereof—which said Exhibit "B," as so amended, is attached hereto as Exhibit "A" and made a part of this report.

A bill was accordingly drafted and introduced in the 1913 legislature. It went before the Joint Judiciary Committee, and arguments in favor of its passage were made before that committee by members of this branch.

We know of no one who appeared in opposition thereto. However, it was not received favorably, and the legislature went so far in opposition thereto as to amend Section 4701 Stats., making Section 2851 Stats. inapplicable to criminal cases.

We are still of the opinion that said report of this committee and the action of this branch thereon were and are sound and recommend that the legislation so recommended be urged for passage before

the 1915 legislature, including appropriate amendment of Section 4701.

While agreeing to the foregoing recommendations in substance, members of the committee make special recommendations on some points.

Geo. L. Williams is of the opinion that "special venires" should be entirely done away with and recommends that the words in said proposed Section 4690

> "unless the court shall otherwise direct, when the court may summon additional jurors by special venire"

be stricken out and that the following be substituted in lieu thereof:

> "Thereupon the court shall require the jury commissioners forthwith to make up another list of such number as the court shall direct, and the drawing shall proceed as before; other lists may be made up in the same manner if necessary until a jury is secured."

Among other changes, H. O. Fairchild suggests that after the words "challenge for cause" in each of said sections there should be inserted the words "or favor."

Judge Wickham makes the following suggestions relative to amendments to Sections 4689 and 4690, with proposed drafts of such sections, as follows:

> "1st. The subject of obtaining a jury in Circuit Courts where the number selected are insufficient is covered by Sections 2533c and 2533d. Any amendment to the statute upon this subject I think should be an amendment of these sections instead of an amendment to Section 4690. It frequently occurs during a term of court that two or three extra jurors are needed in a criminal case. Such jurors can often be obtained from bystanders or by issuing a special venire instead of drawing them from the list returned by the jury commissioners. If they were obtained from the latter list it might be necessary to adjourn court for a day or more to secure their attendance. There may be certain cases where it would be more satisfactory to select the jury from the list returned by the jury commissioners. I think the matter should be left to the discretion of the court and that if any amendment should be made, Section 2533d should be amended accordingly.
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> 2nd. The words 'According to the present practice' in amendment to Section 4690, as proposed, might involve some uncertainty as to what the present practice is.
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> I have prepared and herewith enclose a proposed amendment to Sections 4689 and 4690 which I think would cover the subject. It may not be any better and perhaps not as good as your Exhibit A, but it occurred to me that it stated the matter a little more clearly.

* * * * * * *

Section 4689. When the accused is charged with the commission of an offense not punishable by imprisonment for life the state and the defense each shall be entitled to four peremptory challenges and no more, and the jury shall be selected in the same manner as is provided by Section 2851, except that twenty jurors instead of eighteen first shall be called.

Section 4690. When the accused is charged with the commission of an offense punishable by imprisonment for life the state and the defense each shall be entitled to twelve peremptory challenges and no more. Twenty jurors, not including those excused for cause or challenged peremptorily, shall be kept in the box until each party shall have alternately exercised or waived eight peremptory challenges and from the twenty jurors then remaining the jury shall be selected in the manner provided by Section 4689."

Judge Higbee, while cordially agreeing in general with the views suggested by the above report, emphatically urges his disagreement with the statement that our Supreme Court took advanced ground in the case of *Burns v. State,* 145 Wis. 390, as stated in said report.

Exhibit "A."—Amend Sections 4689 and 4690 Stats. 1898 so as to read as follows:

"Section 4689. Upon the trial of any person or persons upon any indictment or information for an offense not punishable by imprisonment for life the state and the defense shall be each entitled to four peremptory challenges and no more, those allowed to the defense to be divided equally, as practicable, among the defendants by the court when there are more than one defendant. Twenty jurors shall be called in the action and from the twenty remaining after challenge for cause each side shall be entitled to four peremptory challenges. The challenges shall be made alternately by the parties, one at a time, the prosecuting attorney beginning; and when either party shall decline to challenge in his turn such challenge shall be made by the clerk by lot.

Section 4690. In trials for any offense punishable by imprisonment in the State prison for life the defense shall be entitled to challenge peremptorily twelve persons returned as jurors and no more, to be divided equally, as practicable, among the defendants by the court when there are more than one defendant; and the prosecuting attorney shall be entitled to the same number of peremptory challenges allowed to the defense and no more. Twenty jurors shall be called in the action and from the twenty remaining after challenge for cause and after each party, to the extent he may elect, has exercised his right to challenge peremptorily eight jurors according to the present practice, each party shall be entitled to four peremptory challenges, such challenges to be made by the parties or the clerk as provided in Sec. 4689. In all criminal trials when the original panel of thirty-six jurors has been exhausted, additional jurors shall be drawn from the

list returned by the jury commissioners until such list shall be exhausted, unless the court shall otherwise direct, when the court may summon additional jurors by special venire."

III. FINAL REPORT OF COMMITTEE ON CONVICT LABOR AND COMPENSATION TO THE DEPENDENTS OF CONVICTS.

ARTHUR F. BELITZ, CHAIRMAN.[1]

Since the submission of the last previous report of Committee F, two years ago, the agitation upon the proposition of convict labor and compensation to the dependents of convicts has been fruitful beyond the fondest hopes of the committee. Legislation has been enacted which places Wisconsin as far in the lead in this field as it is upon so many other questions of public policy. The results accomplished were made possible very largely by the enlightened interest and hearty co-operation of the state board of control of Wisconsin, which is the best assurance that the statutes thus placed upon the books are going to be administered with purpose and effectively.

In this situation, the only remaining duty of your committee is to spread upon the record of the Institute copies of the acts referred to. On the subject of convict labor in general, we have the broad and comprehensive provisions of Chapter 716, Laws of 1913, creating Section 4918m of the statutes, viz.:

"Section 4918m. 1. The state board of control of Wisconsin is empowered to establish various industries for the employment of prisoners in the state reformatory and in the state prison, and to manufacture articles for use by the state and its public institutions, and by political division of the state and their public institutions, and for sale in the open market. The said board shall fix the price of all articles produced as near the market price as possible.

2. As soon as the state board of control of Wisconsin is prepared to furnish prison products, it shall be the duty of said board to give notice to the proper officials of the state and its public institutions and of the political divisions of the state and their public institutions of the kind of kinds of products that it has manufactured or is prepared to manufacture, and on or before October first in each year thereafter, the proper officials of the state and its public institutions and of the political divisions of the state and their public insitutions shall report to said board and give to said board estimates of the amounts of such prison products which they will require for the ensuing year.

3. The state and its public institutions and the political divisions of the state and their public institutions shall not,

[1]The members of the committee are as follows: Arthur F. Belitz, Judge C. L. Fifield, Judge C. B. Rogers, Judge N. B. Neelen, Marion N. Ogden, Rosa Perdue, E. A. Ross, W. F. Greenman, Mrs. G. A. Hipke, W. A. Phillips.

without permission from the state board of control of Wisconsin, purchase any such supplies, other than road-building material, except from the state board of control of Wisconsin. Any official violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction thereof, be punished by a fine of not to exceed one hundred dollars, or not to exceed six months' imprisonment, or both.

4. Whenever the state board of control of Wisconsin refuses to grant permission to purchase supplies elsewhere, the state department, or political division, or public institution to which permission is refused, may appeal to the governor, whose decision shall be final.

5. The state board of control is empowered to purchase and install in the state reformatory and in the state prison machinery for the employment of the labor of prisoners; to lease or purchase land within the state for the employment of prisoners at farm work; to construct temporary barracks for prisoners employed outside the prison inclosure; to lease or purchase beds of limestone suitable for the manufacture of fertilizer, and beds of rock suitable for road-building material and the right to invest a sufficient sum of money in raw materials for use in manufacturing; and to appoint and fix the salaries of skilled workmen and officials needed to conduct the prison industries.

6. The state board of control of Wisconsin and the state highway commission are empowered to use state convicts in the construction and maintenance of such roads or driveways as they may select, and in such manner and upon such terms as the two bodies may agree upon, and to report to the governor for the use of the legislature of 1915 their findings in the matter and their view as to the availability of convicts in state road construction.

7. The state board of control of Wisconsin shall credit prisoners with compensation, which shall vary for different prisoners in accordance with the pecuniary value of the work performed, willingness and good behavior.

8. The state board of control of Wisconsin shall make, in its biennial report to the governor, a statement showing in detail the amount of each of the various articles produced in the prison industries, the disposition of these articles, the cost of the raw material purchased, the new machinery installed, and the cost thereof, the land purchased or leased and the cost thereof, the rates and total amount of wages paid to prisoners."

For the purpose of furnishing still broader opportunities for the non-union labor of our public charges, with the most direct and striking public advantages, specific authority was granted by the legislature to further the urgent state-wide project of improving roads and highways, by the efficient investment of convict labor. No doubt the all around beneficial results to be achieved by this progressive measure

must, of its own momentum, inevitably lead to further extensions of needed public works. The theory that those who have breached social law may retrieve their lost honor and manhood by the penitence of social service and social betterments is eminently just and right. Economically it offers the least minimum disturbance of general industrial and free labor conditions. Politically it points the way to the most effective solution of many problems of public improvements. The act referred to is Chapter 717, Laws of 1913, creating Section 4937m of the statutes, viz.:

> "Section 4937m. 1. The state board of control of Wisconsin is authorized and empowered to employ inmates of the Wisconsin state prison in the construction and improvement of such roads and highways as the state board of control of Wisconsin and the state highway commission may determine, in such manner and under such terms as may be agreed upon.
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> 2. For each such convict so employed, the state board of control of Wisconsin shall set aside for such work performed, such a per diem as in the discretion of said board may seem proper and just; said money shall, as the state board of control of Wisconsin may determine, be paid either to such convict or to the members of his family dependent upon him for support, in the same manner as is provided by statute for the disbursement of convicts' earnings.
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> 3. The state board of control of Wisconsin is authorized to purchase or lease such tools and machinery as said board and the state highway commission may deem necessary for the purpose of carrying out the provisions of this section.
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> 4. The state board of control of Wisconsin and the state highway commission are authorized to investigate stone quarries and gravel pits for the purpose of determining what may be proper material to be used in the construction and improvement of such highways, and said board and the state highway commission are also authorized to investigate the methods employed in other states in reference to the construction of highways by state convicts.
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> 5. The state board of control of Wisconsin is hereby directed to make a report of such investigation and of the result of the operation of this law, such report to be made to the governor before January 1, 1915, and said board is also authorized to make any recommendations that it desires in reference to the employment of convicts on road construction and highways, such recommendations to accompany said report."

The most gratifying principle, however, established by the new legislation is that the earnings thus to accrue shall go to the convict, and eventually to his dependents, who were deprived of them by the incarceration of the family provider. This act is Chapter 353, Laws of 1913, creating Sections 4942a and 4942b of the statutes, viz.:

"Section 4942a. The state board of control of Wisconsin is hereby authorized and empowered to provide for the payment to prisoners confined in the state prison or in the state reformatory of such pecuniary earnings and for the rendering of such assistance as it may deem proper, under such rules and regulations as it may provide. Such earnings shall be paid out of the fund provided for the carrying on of the work in which the prisoner is engaged when employed on state account, and by the contractor when the prisoner is employed under contract.

Section 4942b. Any money arising under Sections 4942 or 4942a of the statutes shall be and remain under the control of the state board of control, to be used for the benefit of the prisoner, his family or dependent relatives, under such regulations as to time, manner and amount of disbursements as the board may prescribe; but should any such prisoner willfully escape from the state reformatory or the state prison or become a fugitive from justice, or commit any breach of discipline at either institution, the said board of control may, in its discretion, cause the forfeiture of all earnings remaining to the prisoner's credit and the same shall be replaced in the fund from which it was originally taken. It is further provided that in case of earnings paid by the contractor to the prisoner employed under the contract, same shall be placed in the current expense fund of the institution in which the prisoner may be confined."

Similar but more positive provision was made as regards county prisoners by the so-called "Huber Law."

This is Chapter 625, Laws of 1913, creating Section 697c of the statutes, viz.:

"Section 697c. 1. Upon the completion of any such workhouse the county clerk shall notify in writing each justice of the peace, police justice and the judge of every court held in his county of the fact and thereafter whenever any male person over sixteen years of age shall be convicted within such county of any offense of which a justice of the peace under the general law has jurisdiction to hear, try and determine or any person convicted in any court of any felony, where jail sentence is imposed by the court, he shall be punished by imprisonment in the workhouse or in the county jail as provided in the next subsection in the discretion of the court, at hard manual labor, and the commitment shall be to such workhouse at hard manual labor. Any person committed to such workhouse who shall, being of sufficient ability to do so, refuse to work diligently may be punished by being placed in solitary confinement therein not to exceed ten days for each refusal to so work, the period of such confinement being discretionary with the superintendent, and shall receive bread and water only during such time. No intoxicating beverage shall be furnished to or used by any person committed to any workhouse during his confinement therein.

2. (a) In any county, having no workhouse, such sentence

shall be to the county jail at hard labor. Any person so committed shall be required to do and perform any suitable hard labor for not to exceed ten hours each day, except in case of farm labor, not less than ten hours nor more than twelve hours each day, Sundays and holidays excepted, provided for by the sheriff anywhere within said county. The court sentencing such persons shall have power at the time such sentence is imposed or at any time thereafter during the time of such sentence, to direct the kind of labor at which such person shall be employed and the nature of the care and treatment such person shall receive during such sentence. Such direction of such court shall be based upon a reasonable consideration of the health and training of such person and his ability to perform labor of various kinds and the ability of the sheriff to find and furnish various kinds of employment. The county jail of such county is extended to any place within the county where said work is so provided by the sheriff. The sheriff shall at all times have the custody of such convicted person.

(b) Every person employed under the provisions of this subsection who shall perform faithfully all the duties assigned to him, shall, for willingness, industry and good behavior in such performance, be entitled to a deduction from the time of his sentence of one-fourth of the time thereof. Any such person who, being of sufficient ability, shall refuse to work diligently may be punished by being placed in solitary confinement not to exceed ten days for each refusal so to work, and shall receive bread and water only during such time. Any such person who shall escape or attempt to escape shall be deemed guilty of a crime and on conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the state prison or county jail not more than one year.

(c) Any person who shall knowingly furnish to such convicted person, and any such convicted person who shall use any intoxicating liquors or drinks shall on conviction be punished by commitment to the county jail at hard manual labor for not less than thirty days and not more than six months.

(d) It shall be the duty of the sheriff to make contracts in writing for the employment of all such convicted persons, where not employed in doing work for the county, and to make all needful regulations for the profitable employment of such persons and for the collection of their earnings. And for unreasonably neglecting or refusing to carry out all the provisions of this section the sheriff shall be subject to a fine of not to exceed one hundred dollars, and for a second offense shall be removed from office on charges duly preferred against him and proof of such failure.

(e) At the time of sentencing such person to hard labor the court shall by the taking of such proof as may be necessary, same to be a part of the costs in said action, determine what person or persons, if any, are actually dependent on such person

for support and the names of such person or persons shall be placed in the docket of said court and also in the commitment of such person to the county jail. And the court shall at the same time designate the person to whom payments are to be made for such dependent person or persons, as hereinafter provided, the name of which person shall also appear in the docket of said court and in said commitment. It shall be the duty of the sheriff at the end of each week to pay over to the person designated in said commitment for the person or persons so found to be dependent on such convicted person for support, a sum equal to the value of the earnings of such person, collected by him. In case such convicted person has worked for the county, then the sheriff shall, at the end of each week, deliver to the person so designated to receive same an order on said county, payable to the person, for an amount equal to one dollar per day for the number of days that such person has actually worked for such county. Said order shall state who has earned said money and who are entitled to same for support.

(f) And it shall be the duty of the county treasurer of said county to pay said orders out of any available funds of said county on same being presented to him for payment.

(g) All money collected by the sheriff by virtue of this section and not otherwise disposed of shall, at the end of each month, be turned over to the county treasurer of said county as the property of said county, together with an itemized statement showing by whom same was earned and paid.

(h) It shall be the duty of the sheriff to render to the county board, at each session or meeting thereof, a sworn itemized statement of all money so collected, by whom earned, by whom paid and also all sums paid out, to whom paid and for whom, including the orders drawn on said county as provided herein.

(i) In counties in which sheriffs are paid a salary, sheriffs shall receive no extra compensation in carrying out the provisions of this subsection; and in counties in which sheriffs are paid fees, such sheriffs shall receive such compensation as may be fixed by the county board of any such county; provided, that until such time as such compensation shall be so fixed, such sheriffs shall receive five cents per mile for each mile actually and necessarily traveled in carrying out the provisions of this subsection, which compensation shall be paid by the county."

In addition to all the foregoing, there was added to Section 573f of the statutes, by Chapter 669, Laws of 1913, the following subsection, viz.:

"11. The board of control shall make a general survey and investigation of the question of aid to mothers and dependent children of this state and shall report its findings and recommendations to the next legislature not later than March 1, 1915."

Your committee is informed that a beginning has been made in the execution of all the acts listed above and that their administration

will be vigorously proceeded with. As a mark of the utmost confidence in the efficiency of the authorities charged with those functions, we express the belief that our work is finished, and recommend that Committee F be now dissolved.

IV. REPORT OF COMMITTEE ON TRIAL PROCEDURE.

C. A. FOWLER, CHAIRMAN.[1]

Your committee on trial procedure reports as follows:

By request of the president we indicate the statutes in force, passage of which was recommended by this committee.

Section 4724a, Wis. St., passed in 1911, relating to writs of error by the state in criminal cases.

Section 456a, Wis. St., passed in 1911, requiring a defendant to present objections to an information or indictment before jeopardy has attached, and providing that presentation of them afterwards shall operate as a waiver of the defense of former jeopardy.

Amendment, passed in 1913, to Section 4086, Wis. St., relating to depositions, authorizing the taking, in criminal cases, at the instance of the state, of depositions of persons in imminent danger of death.

Upon like request we report the recommendations of the committee that have failed of enactment.

The 1910 committee recommended amendment of Section 4786, Wis. St., to authorize examination of the accused and any person suspected of complicity in the offense charged, but providing for appointment of counsel in case claim of privilege was asserted.

The 1910 committee also recommended amendment of Sections 4852 and 4853, Wis. St., to authorize officers of any other state to hold in their custody within this state persons convicted of or charged with crime while conveying them through the state for execution of sentence or for trial in the other state, and protecting the officer against being required to release a person being so conveyed on a writ of *habeas corpus*.

The 1912 committee recommended the passage of an act to authorize a court of record of this state to issue a subpoena requiring a person resident of this state to attend as a witness upon the trial of a criminal case in another state, and subjecting the person to the same punishment for disobedience as is provided for disobedience of a subpoena to attend as a witness within the state, limiting the benefits of the statute, however, to such states as shall have enacted a

[1]The membership of this committee is as follows: Chester A. Fowler, George Clementson, H. S. Richards, J. E. McConnell, John J. Blaine, J. C. Gilbertson.

similar statute, so that this state would not be imposing any burdens upon is residents for the benefit of the courts of other states unless such other states imposed like burdens upon its residents for the benefit of our courts.

At the 1910, 1911 and 1912 meetings recommendations were made by this committee, in some form or another, for repealing or modifying the constitutional provision protecting persons accused of crime against self-incrimination. Three members of the 1910 committee did not concur in the recommendation then made. The 1911 and 1912 reports were unanimous.

The committee would recommend further effort by the association to secure the enactment of the two provisions last above referred to. All members of the committee who have expressed themselves favor this course as to compelling attendance of witnesses outside the state in criminal cases. Senator Blain has experienced a change of mind as to the self-incriminating provisions, but the rest of the committee hold to their views as previously expressed.

The printed report of the 1912 meeting, on pages 134 and 135, contains proposed terms of the constitutional provisions and of a legislative act for carrying out these recommendations, and we have no changes to suggest in them.

We have no other changes in the statutes or constitution to suggest.

Below are the names of such members of the committee as join in this report, being those who have favored the chairman with expression of their views.

V. REPORT OF COMMITTEE ON JUVENILE OFFENDER; TRIAL AND SUBSEQUENT PROCEEDINGS.

A. C. BACKUS, CHAIRMAN.[1]

Two years ago there was submitted to this committee the problem of what to do with the habitual criminal.

A report of this committee embodying recommendations for the enactment of the habitual criminal act was adopted at our last conference and the proposed act was recommended to the legislature of 1913. The measure was passed by both houses and then was reconsidered by the assembly and passage refused on an occasion when the attendance of members was light.

The same question has been re-referred to this committee and has been reconsidered.

[1]The membership of this committee is as follows: Hon. A. C. Backus, A. H. Reid, R. E. Smith.

This question very properly assumes that a large portion of the inmates of our penal and reformatory institutions are of the habitual criminal class and that existing statutes provide very inefficient methods of protecting society from that class. This situation is very generally recognized. The practice of dealing with habitual criminals has been proven to be wasteful, expensive, useless as an effort to reform the criminal and exceedingly poor protection to law-abiding society. The habitual criminal has no idea of going out to earn his own living or of being useful to society. He spends his life in serving successive prison terms with intermediate periods of liberty during which he is engaged in committing new offenses, preying on society, propagating his class and in being pursued, re-arrested and re-convicted at great expense to the public.

Wisconsin has long had statutes providing for setting up indictments and informations, and establishing the fact of previous conviction. Upon a conviction following such indictment or information and a finding of previous conviction, the legal penalties are increased over those provided for a first conviction. This statute has been almost entirely disregarded. In our experience we have known of but three or four instances in which it has been invoked.

The reasons are not far to seek. The habitual criminal is skillful and diligent in concealing his identity and past record. That is a part of his methods of life. He has many aliases. He avoids haunts where he is known when committing crime. When caught he usually pleads guilty and screens his past. As a result he usually poses before the court as a first offender and the court and prosecution know nothing different. His constitutional immunities enable him to refuse to give evidence against himself, and to refuse to allow such examination, measurement and photographing as might result through identification bureaus in disclosing his record. There have been no means provided for making an issue in respect to his habit of criminality and very poor means of obtaining evidence to prove his character.

We report herewith the outlines of a proposed enactment which we believe will provide an efficient and economical system of dealing with habitual criminals. Since our last report our views have undergone substantial change and the measure proposed herewith is different in some important particulars from that proposed two years ago. Further consideration and study raised in our minds serious doubt as to the constitutionality of the measure proposed two years ago. We have sought to eliminate constitutional objections in the new measure.

We propose continuous detention of the habitual criminal in very much the same manner as the insane and other defectives are

now detained. We believe that the state should establish a separate penal institution or colony for the detention of habitual criminals where they can be made self-supporting with the least possible punishment consistent with safe detention. With that in mind we recommend that investigation be made of the available islands in the border waters of the state with a view to determining whether an island may be obtained of such size and location that it may form a natural place of detention without prison walls or other artificial barriers and also furnish space for a great variety of activities under such circumstances as may impose the least punishment compatable with industry, detention and self-support. Such island should be accessible by boat at all times of the year and by boat only.

In practice it is believed that nearly all the complaints will be lodged against convicts who are already in penal institutions and who are believed to be habitual criminals, although provision is made for lodging complaint against any habitual criminal wherever found. During the term of any convict the prison officials, with existing aids and with the right in the prison officials to secure all data needed to identification and to discovery of past criminal record of the convict, can secure the evidence necessary for an intelligent examination and opinion respecting habit of criminality.

The question has arisen in our minds whether the proposed measure would in effect provide for placing any person twice in jeopardy for the same offense. We are of opinion, however, that it would not and that when one is tried for being an habitual criminal he is not put upon trial for a specific crime of any other character.

A Bill

To create Sections 4522f, 4522g and 4522h of the statutes relating to habitual criminals.

The people of the state of Wisconsin, represented in Senate and Assembly, do enact as follows:

Section 1. There are added to the statutes three sections to read:

Section 4522f. Any person who has been convicted within the United States, of two or more felonies or of five or more misdemeanors or of one felony and three or more misdemeanors, and who is reasonably certain if free from enforced restraint to commit further criminal offenses and whose continuance at large is seriously detrimental to the good order of society, is hereby declared to be an habitual criminal.

Section 4522g. The continuance of criminal habits and practices in such manner as shall constitute the person an habitual criminal, as defined in Section 4522r, is hereby declared to be a felony and may be

prosecuted in the same manner as are other felonies and any person convicted of being an habitual criminal shall be sentenced to permanent detention in the state prison of the state of Wisconsin at Waupun, Wisconsin, or in such other institution as may be provided thereof. If any person complained against as being an habitual criminal shall have had a fixed place of abode within this state throughout the year next before his last previous conviction, the county of such residence shall be the place of trial; but if such person have no such fixed place of abode within this state the prosecution may be maintained in any county of this state. The provisions of law respecting change of venue in criminal cases shall apply to such prosecution.

Section 4522h. All persons in detention, after conviction of being habitual criminals, shall be subject to parole by the state board of control, but shall become eligible to such parole only upon earning the right thereto by meritorious conduct in compliance with such rules as may be prescribed by said board. In the event that after a parole has been granted the person shall by meritorious conduct become, in the opinion of the state board of control, able to maintain himself as a law-abiding person out of restraint, said board, with the approval of the governor, shall have power to finally discharge such person from detention and custody.